IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 185 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

COMMISSIONER OF INCOME-TAX

Versus

GIRISH BHAGWATPRASAD

Appearance:
MR MANISH R BHATT for Petitioner
MR SN SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 28/09/98

ORAL JUDGEMENT (per R.K. Abichandani, J.)

The Revenue has suggested the following question in para 4 of its application seeking a direction on the Income Tax Appellate Tribunal to forward the statement of case in respect thereof under Sec. 256(2) of the Income-tax Act, 1961.

" Whether he Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income-tax (Appeals) deleting the addition of Rs. 4,36,307 on account of bad debt observing that in view of the amended provisions of section 36(1)(vii) the assessee is not required to establish that the debt had become bad?"

2. The Tribunal rejected the application made under Sec. 256(1) of the Act for forwarding these questions to the High Court on 5.1.1998 holding that, in view of the amended provision of Sec. 36(1)(vii) of the Act which came into force from 1.4.1989, the assessee was not required to establish that the debt had really become bad during the previous year.

3. The assessee had written off an amount of Rs. 4,36,307 on account of its having become bad debt. That amount stood in the name of M/s. Abhay Textiles as bad debt. The assessee had, in the course of business, advanced some money to that firm which was a sole selling agent of M/s. Prasad Mills Ltd. in which it had deposited the loan amount as security. M/s. Prasad Mills Ltd. incurred losses and ultimately closed down its business on 24.1.1984 and therefore M/s. Abhay Textiles could not realise its money from that company and the assessee, in turn, could not realise its dues from M/s. Abhay Textiles. According to the A.O., the assessee could not prove that the debt had become bad and that the assessee did not try to recover the amount and further that mere delay in recovery did not convert the debt into a bad debt.

4. The C.I.T. (Appeals) found that the amended provisions of Sec. 36(1)(vii) of the Act were applicable under which the assessee was not required to establish that the debt had become bad in the previous year and mere writing off of the amount as bad debt was sufficient. Even on merits, the first appellate authority found that there was no chance for the assessee to recover the amount. Hence, the debt really became bad. The Tribunal also upheld the contention of the assessee on the basis of the provisions of Sec. 36(1)(vii) of the Act which came into force from 1.4.1989 and upheld the findings of the first appellate authority.

5. Under the provisions of Sec. 36(1)(vii) of the Act, deduction was to be allowed in computing the income referred in Sec. 28 of the Act of the amount of any bad

debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year subject to the provisions of sub-sec. (2). Prior to the amendment from 1.4.1989, the allowance under this clause was confined to the debts and loans which had become irrecoverable in the accounting year. Thus, under the provisions of Sec. 36(1)(vii) as in force from 1.4.1989, all that the assessee had to show was that the bad debt was written off as irrecoverable. The genuineness of such a claim made by the assessee was not in doubt. Therefore, all that the Tribunal has done is to uphold the first appellate authority's decision, applying the provisions of amended clause 36(1)(vii) of the Act, and no question of law arises in the matter from such application of the provision to the facts of the case.

6. The present application is, therefore, rejected. Rule is discharged with no order as to costs.
